

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 402.

THE UNITED STATES OF AMERICA, OWNER OF THE
STEAMSHIPS "CLIO," "MOOSEABEE," "FORT LOGAN,"
AND "MORGANZA," ET AL.,

vs.

AMOS D. CARVER AND JOSEPH B. MORRELL, COPART-
NERS DOING BUSINESS UNDER THE FIRM NAME AND
STYLE OF BAKER, CARVER, AND MORRELL.

ON CERTIFICATE FROM UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE SECOND CIRCUIT.

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before going, he learned that "Clio" and "Morganza" were in State Corporation's possession under what he described as "partial payment purchases." He never made any inquiry to discover

3 what that phrase meant, although it was easy so to do. If he had asked he would have learned in Washington, and at once, that "Morganza" had (on December 8, 1919) been chartered to State Corporation by the owners for one year, hire payable monthly in advance; and that said charter contained the following agreement:

"The charterers shall, at their sole expense, man, operate, victual, and supply said vessel; the master and chief engineer, however, to be subject to the approval of the owner.

"The charterers shall pay all port charges, pilotages, and all other costs and expenses incident to the use and operation of said vessel. * * *

"The charterers will not suffer nor permit to be continued any lien, encumbrance, or charge which has or might have priority over the title and interest of the owner in said vessel; but the charterers will in due course, and in any event within fifteen days after the same becomes due and payable, pay, discharge, or make adequate provision for the satisfaction or discharge of every lawful claim or demand which, if unpaid, might, in equity, in admiralty, at law, or by any statute of this or any other nation where said vessel may be navigating or berthed, have priority over the said title and interest, or might operate as a lien, encumbrance, or charge upon said vessel, or cause its detention in port; or will cause said vessel to be released or discharged from any such lien, encumbrance, or charge in any event within fifteen days after such lien, encumbrance, or charge is imposed upon said vessel. * * *

"In general the charterers shall operate the said vessel free of any expense to the owner of any nature or kind whatsoever."

He would further have learned of the following charter clause, which is the sole reason furnished by said document or any other evidence for the phrase "partial payment purchase."

"If the charterers shall have duly paid all the charter hire and shall not then be in default in respect of any of the terms, covenants, or conditions of this charter party, then at the expiration of one year from the date of the delivery of said vessel the charterers shall have the option to purchase said vessel at the cash price of \$103 per deadweight ton on the basis of the deadweight tonnage as stated in the caption hereof, hire theretofore paid to be applied on said purchase price. The exercise of said option shall be simultaneous with the termination of this charter party, and the charterers shall give ten days' notice (in writing) of intention to exercise same."

4 We find that Cunningham was in August, 1920, well aware of facts and circumstances putting him and his employers and princi-

pals on enquiry, and made no enquiry, but preferred or chose to avoid the same.

On returning to New York Cunningham sold through Prosser as before, and delivered to and on board "Morganza," certain other "supplies," and bills for same were rendered to "S/S 'Morganza' and owners State S/S Corp." Such delivery was complete, and bills rendered by September 30th, 1920.

Neither the captain nor any other officer of either "Clio" or "Morganza" had anything to do with the matters hereinabove detailed.

On October 7, 1920, an involuntary petition in bankruptcy was filed against State Steamship Corporation; it has since been adjudicated, and is insolvent.

On October 15, 1920, the libel herein was filed, asserting that for the agreed price of said supplies libellants had, or would have had if the steamers had been privately owned, maritime liens against "Clio" and "Morganza," respectively, the amount of each lien being the price of what went aboard one vessel; and further alleging liability in respect of both demands on the part of the United States.

The liability of State S. S. Corporation in personam and in admiralty for said supplies was and is clearly proved.

The liability of the vessels is asserted under the "Act relating to liens on vessels," &c., approved June 23, 1910, and "The merchant marine act, 1920," approved June 5, 1920; and that of the United States under the "Act authorizing suits against the United States in admiralty, &c.," approved March 9, 1920. The District Court granted decree for the agreed prices of said supplies, &c., against the United States; with right of recovery over (after payment) from the estate in bankruptcy of State S. S. Corporation. Whereupon the United States appealed.

QUESTIONS CERTIFIED.

Under the statutes enumerated, or any of them:

(1) Would maritime lien for necessities or supplies have arisen as against "Clio," had that vessel been privately owned?

(2) Would a maritime lien for necessities or supplies have arisen as against "Morganza," had that vessel been privately owned?

If either or both of the foregoing questions are answered in the affirmative—

(3) Is the United States liable for the amount of what would have been a lien, had the vessel affected been privately owned?

If either or both of questions 1 and 2 are answered in the negative—

(4) Is the United States liable for the personal indebtedness of State S. S. Corporation, in respect of supplies and necessities fur-

nished to a vessel, in respect of which no maritime lien would have arisen, had such vessel been privately owned?

Dated May 15, 1922.

HENRY WADE ROGERS,
CHARLES M. HOUGH,
MARTIN T. MANTON,

Judges of the United States Circuit Court of Appeals.

7 United States Circuit Court of Appeals for the Second Circuit.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, William Parkin, clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing certificate and statement of facts in the case of Amos D. Carver et al. against the United States, etc., was duly filed and entered of record in my office by order of said court, and, as directed by said court, the said certificate is by me forwarded to the Supreme Court of the United States for its action thereon.

In witness whereof I have hereunto subscribed my name and affixed the seal of said court, at the city of New York, on the 18th day of May, 1922.

[SEAL.]

WM. PARKIN,
*Clerk of the United States Circuit Court
of Appeals for the Second Circuit.*

8 (Indorsed:) United States Circuit Court of Appeals, Second Circuit. Amos D. Carver et al. vs. United States of America, &c. Certificate. Filed May 18, 1922. William Parkin, clerk, United States Circuit Court of Appeals, Second Circuit. Received May 19, 1922. Office of the clerk Supreme Court U. S.

(Indorsement on cover:) File No. 28,952. U. S. Circuit Court of Appeals, Second Circuit. Term No. 402. The United States of America, owner of the steamships "Clio," "Mooseabee," "Fort Logan," and "Morganza," et al., vs. Amos D. Carver and Joseph B. Morrell, copartners doing business under the firm name and style of Baker, Carver and Morrell. Filed May 27th, 1922. File No. 28,952.